



**BILLING CODE: 6560-50-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Parts 239 and 258**

**[EPA-R10-RCRA-2013-0105; FRL -9796-6]**

### **Adequacy of Oregon Municipal Solid Waste Landfill Permit Program**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** This action approves a modification to the State of Oregon's approved Municipal Solid Waste Landfill (MSWLF) permit program. The approved modification allows the State to issue Research, Development, and Demonstration (RD&D) Permits to owners and operators of MSWLF units in accordance with its State law. On March 22, 2004, the EPA issued final regulations allowing RD&D Permits to be issued to certain municipal solid waste landfills by approved states. On June 14, 2012, Oregon submitted an application to EPA Region 10 seeking Federal approval of its RD&D Permit requirements. After thorough review, EPA Region 10 is determining that Oregon's RD&D Permit requirements are adequate through this direct final action.

**DATES:** This direct final rule will become effective **[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further notice unless the EPA receives written adverse comments on or before **[INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If written adverse comments are received, the EPA will review the comments and publish another Federal Register document responding to the comments and either affirming or revising the initial decision.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R10-RCRA-2013-0105, by one of the following methods:

- [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.
- Email: [calabro.domenic@epa.gov](mailto:calabro.domenic@epa.gov)
- Fax: (206) 553-8509, to the attention of Domenic Calabro.
- Mail: Domenic Calabro, Office of Air, Waste and Toxics, U.S. EPA, Region 10, 1200 Sixth Avenue, Suite 900, Mailstop: AWT-122, Seattle, WA 98101.
- Hand Delivery or Courier: Deliver your comments to Domenic Calabro, Office of Air, Waste and Toxics, U.S. EPA, Region 10, 1200 Sixth Avenue, Suite 900, Mailstop: AWT-122, Seattle, WA 98101. Such deliveries are only accepted during the Office's normal hours of operation.

Instructions: Identify your comments as relating to Docket ID No. EPA-R10-RCRA-2013-0105.

The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential

Business Information (CBI) or claimed to be other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an “anonymous access” system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA’s public docket visit the EPA Docket Center homepage at <http://www.epa.gov/dockets/>.

Docket: EPA has established a docket for this action under Docket ID No. **EPA-R10-RCRA-2013-0105**. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website.

Although it may be listed in the index, some information might not be publicly available, e.g., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the U.S. Region 10 Library, 1200 Sixth Avenue, Seattle, Washington by appointment only; please telephone (206) 553-1289 to make an appointment.

**FOR FURTHER INFORMATION CONTACT:** Domenic Calabro, Office of Air, Waste and Toxics, U.S. EPA, Region 10, 1200 Sixth Avenue, Suite 900, Mailstop: AWT-122, Seattle, WA 98101, (206) 553-6640, calabro.domenic@epa.gov.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On March 22, 2004, the EPA issued a final rule amending the Municipal Solid Waste Landfill (MSWLF) criteria in 40 C.F.R. Part 258 to allow Research, Development, and Demonstration (RD&D) permits (69 FR 13242). This rule allows for variances from specified criteria for a limited period of time, to be implemented through state-issued RD&D permits. RD&D permits are available only in states with approved MSWLF permit programs that have been modified to incorporate RD&D permit authority. The purpose of the rule is to stimulate the development of new technologies and alternative operational processes for the landfilling of municipal solid waste.

RD&D permits may provide variances from existing requirements for run-on control systems, liquid restrictions, and final cover requirements. There is no authority for variance of criteria for groundwater monitoring, closure and post-closure requirements (except alternative cover provisions), or financial assurance requirements. To issue an RD&D permit allowing variances from any of these criteria, the director of an approved state must be satisfied that a landfill operating under an RD&D permit will pose no additional risk to human health and the environment beyond that which would result from a landfill operating under the full MSWLF criteria.

While states are not required to seek approval to allow permits under this new provision, those states interested in providing RD&D permits to owners and operators of MSWLFs must seek approval from the EPA before issuing such permits. Approval procedures for the new provisions of 40 C.F.R. Part 258 are outlined in 40 C.F.R. § 239.12.

On October 7, 1993, EPA published a final rule (58 FR 193) approving the State of Oregon's MSWLF permit program. On June 14, 2012, Oregon Department of Environmental Quality (ODEQ) applied for approval of its RD&D permit provisions, codified at ORS 459.245(4). In addition, Oregon has a state flexibility rule (OAR 340-094-0020) which allows the Director of the ODEQ or a designee to approve an alternative schedule, procedure, or design as long as that alternative is at least as protective of the environment as the provisions in 40 CFR Part 258 and a guidance document titled, "Guidance for Obtaining a Department RD&D Permit."

Oregon Assistant Attorney General, Gary L. Vrooman, certified in a letter dated August 24, 2012 that the information filed with ODEQ as part of an MSWLF permit modification application is effectively an RD&D plan and that this plan, when approved by ODEQ, becomes an enforceable part of the permit. Assistant Attorney General Vrooman additionally certified that the Oregon solid waste rules and guidance were effective at the time of the certification.

## **II. Decision**

After a thorough review the EPA, Region 10, has determined that the Oregon RD&D permit provisions as set out in ORS 459.245(4) and OAR 340-094-0020, combined with the ODEQ guidance document titled "Guidance for Obtaining a Department RD&D Permit", comply with the Federal criteria, as set forth in 40 CFR 258.4.

### **III. Statutory and Executive Order Reviews**

This action approves State solid waste requirements pursuant to Resource Conservation and Recovery Act (RCRA) Section 4005 and imposes no Federal requirements. Therefore, this rule complies with applicable executive orders and statutory provisions as follows:

#### *1. Executive Order 12866: Significant Regulatory Action*

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Order 12866.

#### *2. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3(b). This direct final rule does not establish or modify any information or recordkeeping requirements for the regulated community. The EPA has determined that this action is not subject to the provisions of the Paperwork Reduction Act.

#### *3. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), 5 U.S.C. 601, et seq., generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this direct final rule on

small entities, small entity is defined as: (1) A small business, as codified in the Small Business Size Regulations at 13 CFR part 121; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The EPA has determined that this direct final action will not have a significant impact on small entities because the action will only have the effect of modifying pre-existing authorized requirements under State law. I certify that this action will not have a significant economic impact on a substantial number of small entities.

#### *4. Unfunded Mandates Reform Act*

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for State, local, or tribal governments or the private sector. This action imposes no new enforceable duty on any State, local or tribal governments or the private sector. This action contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, the EPA has determined that the requirements of section 203 of the UMRA do not apply to this action.

#### *5. Executive Order 13132: Federalism*

This action addresses a modification to Oregon's approved municipal solid waste landfill (MSWLF) permit program, which has been modified by State law to incorporate RD&D permitting authority. There are no substantial direct effects on the States, on the relationship between Federal and State governments, or on the distribution of power between or among the various levels of government, as specified in Executive Order 13132. Therefore, Executive Order 13132 does not apply to this action.

*6. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175.

This action addresses a modification to Oregon’s approved municipal solid waste landfill (MSWLF) permit program, which has been modified by State law to incorporate RD&D permitting authority. Thus, the EPA has determined that Executive Order 13175 does not apply to this rule.

*7. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks*

This action is not subject to Executive Order 13045 because it is not economically significant and it is not based on health or safety risks.

*8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a “significant regulatory action” as defined under Executive Order 12866.

*9. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs the EPA to provide Congress, through the OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. EPA has determined that this action does not involve “technical standards” as defined by the NTTAA. Therefore, the EPA is not considering the use of any voluntary consensus standards.



*10. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action addresses a modification to Oregon's approved municipal solid waste landfill (MSWLF) permit program, which has been modified by State law to incorporate RD&D permitting authority. EPA has determined that the action is not subject to Executive Order 12898.

*11. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801, et seq., as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5

U.S.C. 804(2). This action will be effective **[Insert Date 60 Days from Date of Publication in the Federal Register]**.

**List of Subjects**

40 CFR Part 239

Environmental protection, Administrative practice and procedure, Intergovernmental relations, Waste treatment and disposal.

40 CFR Part 258

Reporting and recordkeeping requirements, Waste treatment disposal, Water pollution control.

**Authority:** This action is issued under the authority of section 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6945 and 6949(a).

**Dennis J. McLerran,**  
Regional Administrator, EPA Region 10.

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